

GAHC010109572016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2123/2016

ON THE DEATH OF MANIRAM PATIR @ MONIRAM PATIR, HIS LIGEL HEIR,
AINESWARI PATIR

W/O LATE MANIRAM PATIR@ MONIRAM PATIR, VILL.- BILLMUKH, P.O.-
GHILAMARA, DIST.- LAKHIMPUR, ASSAM, PIN- 787053.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
FINANCE DEPTT., DISPUR, GHY- 6.

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.
DISPUR
GHY- 6.

3:THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19.

4:THE JOINT DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY- 19.

5:THE DIST. ELEMENTARY EDUCATION OFFICER
LAKHIMPUR.

6:THE BLOCK ELEMENTARY EDUCATION OFFICER
BORDOLONI GHILAMARA LAKHIMPUR
ASSAM

PIN- 787053.

7:THE DY. INSPECTOR OF SCHOOLS
DHAKUAKHANA
LAKHIMPUR
PIN- 787055.

8:THE SUB-INSPECTOR OF SCHOOLS
DHAKUAKHANA
LAKHIMPUR
PIN- 787055.

9:THE TREASURY OFFICER
DHAKUAKHANA
LAKHIMPUR
PIN- 787055

Advocate for the Petitioner : MS. S B CHOUDHURY

Advocate for the Respondent : SC, ELEMENTARY EDUCATION

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

18/07/2023

Heard Ms. S B Choudhury, learned counsel for the petitioner and Mr. R Mazumdar, learned Standing counsel, Department of School Education for the respondent Nos. 1 and 3 to 8. Also heard Mr. B Gogoi, learned Standing counsel, Finance Department for the respondent Nos. 2 and 9.

2. It is stated that the petitioner, Maniram Patir @ Moniram Patir who served as an Assistant Teacher under the Deputy Inspector of Schools, Dhakuakhana was not paid his salary since November, 2013. Hence, he filed this writ petition on 28.03.2016 praying amongst others for a direction to the respondent authorities in the Elementary Education Department of the State to release his monthly salary w.e.f. November, 2013 and also to direct the Deputy Director of Schools, Dhakuakhana, respondent No. 7 to consider his representation dated 25.11.2014 that was forwarded by the Block Elementary Education Officer (BEEO), Bordoloni respondent No. 6.

3. During pendency of this writ petition, the petitioner, Maniram Patir @ Moniram Patir expired on

25.08.2017 and his widow, Aineswari Patir filed an Interlocutory Application I.A.(Civil) No. 1758/2022 for substitution of her name in the present proceeding. Pursuant to the order dated 18.07.2022 passed in said I.A.(Civil) No. 1758/2022, name of Smti. Aineswari Patir was accordingly substituted in place of the original petitioner, Maniram Patir @ Moniram Patir.

4. From the annexures appended by the petitioner in this petition, it is seen that the petitioner was an untrained teacher and the then Deputy Inspector of Schools, Dhemaaji by an order dated 01.01.1985 appointed him as a Primary Teacher very temporarily and posted him at 527 No. Gadangarchar Primary School. The said appointment order of the petitioner issued by the Deputy Inspector of Schools, Dhemaaji dated 01.01.1985 (Annexure-A to this petition) was on following terms and conditions:

“1. Initially he/she will get a monthly stipend Rs. 200/- per month for one year after which he/she will be deputed for undergoing Junior Basic Training for one year. During the period of Training he/she will get a sum of Rs. 50/- per month in addition to the regular monthly stipend. If he/she become successful in the training will be given the regular time scale of pay @ Rs. 500/- – 875/- per month plus other allowances as admissible under rules from the date of announcement of the result.

2. If he/she cannot come out success in the final examination will have to serve another one year stipendiary teacher and will be allowed to appear in the next final examination as private candidate for which no T.A./D.A. will be paid. If he/she cannot come out success in the 2nd chance, his/her service will be terminated within one month from the date of announcement of the result for which no claim/appeal will be entertained.”

5. Petitioner accepted the said terms and conditions of order of his appointment dated 01.01.1985 issued by the Deputy Inspector of Schools, Dhemaaji, but he admitted that he could not pass the Junior Basic Training Examination even in his two attempts and as such, in terms of his said appointment order dated 01.01.1985, the Deputy Inspector of Schools, North Lakhimpur by order dated 27.06.1988 terminated him from service.

6. After his said termination, the petitioner along with two other similarly terminated teachers on 06.08.1988 preferred a writ petition being Civil Rule No. 1344/1988 and the Court by order dated 09.08.1988 while issuing Rule calling upon the respondents in the Education Department to show cause as to why a writ should not be issued and in the interim suspended the operation of the said order under Memo No. 3308-10 dated 27.06.1988 passed by the Deputy Inspector of Schools, North

Lakhimpur by which the service of the petitioner herein along with the two other petitioners were terminated as they failed to pass the Junior Basic Training Final Examination even in the 2nd (second) chance as per the terms and conditions of their said order of appointment dated 01.01.1985.

7. The petitioner has placed a communication of the Joint Director of Elementary Education, Assam, Kahilipara issued under No. EAA-12/73/386 dated 06.06.1989 informing all the Deputy Inspector of Schools of the State regarding re-appointment of teachers in Elementary Schools wherein it was specified that —*those stipendiary teachers who could not pass the Junior Basic Training in spite of their two attempts and have been removed from service, if those stipendiary teachers on their 3rd attempt or thereafter could pass the Junior Basic Training then re-appointment of those teachers can be considered through the relevant rules of appointment by giving them preference above others* [Annexure-C to this petition (English translated version at Page-15) (copy of original vernacular in Assamese at Page-16). But, the English translation from the vernacular is not found to be correct; as such the vernacular communication dated 06.06.1989 has taken in to consideration].

8. It is stated that the petitioner passed the Junior Basic Training Course on his 3rd attempt and thereafter, he submitted an application before the Director of Elementary Education (DEE), Assam for his re-appointment in terms of the said communication of the respondents in the Elementary Education, issued under No. EAA-12/73/386 dated 06.06.1989, noted above. Considering the same, the Director of Elementary Education, Assam by his communication No. EAA-32/89/31 dated 26.10.1989 forwarded the said application of the petitioner to the Deputy Inspector of Schools, Dhemaji requesting him to appoint the petitioner in any regular post of lower primary school teacher subject to vacancy as per the said communication No. EAA-32/89/30 dated 26.10.1989.

9. Petitioner stated that pursuant to the order of the Court dated 09.08.1988 passed in said Civil Rule No. 1344/1988 as well as the letter of the Joint Director of the Elementary Education, Assam under Memo No. EAA-12/73/386 dated 06.06.1989, the Deputy Inspector of Schools, Dhakuakhana and North Lakhimpur by his order under Memo No. Pri-1/90/31987-91 dated 02.03.1991 appointed the petitioner as Assistant Teacher in the pay scale of Rs.1185/- to Rs. 2395/- and posted him at Korhabandh Lower Primary School against a post that fell vacant on retirement of one Sri Sarbeswar Gogoi with the observation that the said appointment of the petitioner was purely temporary and that his service could be terminated without any show cause.

10. By another order dated 20.06.1992 issued by the Deputy Inspector of Schools, North Lakhimpur, the petitioner was transferred from Korhabandh Lower Primary School and was posted at

Bilmukh Kathalguri Primary School as an Assistant Teacher. By an order dated 02.08.1995 issued by the Deputy Inspector of Schools, Dhakuakhana, the service of the petitioner was regularized as he has completed more than 3 (three) years of service w.e.f. 01.03.1995.

11. By a letter dated 14.06.2013, the Deputy Inspector of Schools, Dhakuakhana informed the BEEO, Bordoloni (Ghilamara) that the salary of the petitioner may be released as he was appointed regularly from 1991 as per the direction of the High Court as after verification of the documents, his appointment was found to be valid. In pursuance of the communication of the Director of Elementary Education, Assam regarding non-payment of salary to the petitioner, the BEEO, Bordoloni by communication dated 23.12.2013 informed the DEE, Assam regarding his appointment that was made by the then Deputy Inspector of Schools, North Lakhimpur and Dhakuakhana vide order dated 02.03.1991 and also about the hearing that had already been conducted on 29.09.2013 pertaining to the salary of the petitioner.

12. By a letter dated 30.12.2013, the Deputy Inspector of Schools, Dhakuakhana wrote to the DEE, Assam referring the said letter of the BEEO, Bordoloni dated 23.12.2013 requesting the authority concerned to release the salary of the petitioner on sympathetic consideration.

13. The petitioner had also submitted a representation before the BEEO, Bordoloni on 25.11.2014 to release his salary and it was forwarded by the BEEO, Bordoloni on 23.12.2014 to the Deputy Inspector of Schools, Dhakuakhana.

14. The DEE, Assam on 19.10.2022 filed its affidavit in the matter clarifying that as per the condition laid down in the initial order of appointment dated 01.01.1985 issued by the then Deputy Inspector of Schools, Dhemaji, the petitioner was required to pass the Junior Basic Training in the first chance and if not succeeded then in the 2nd chance, as a private candidate. In the said affidavit, the DEE, Assam also stated that as per the said terms and conditions of his said order of appointment dated 01.01.1985, if he did not succeed in the second chance, his service was to be terminated by the Deputy Inspector of Schools, Lakhimpur and since the petitioner failed to clear his Junior Basic Training even in his second chance, the Deputy Inspector of Schools, Lakhimpur terminated the petitioner from service against which he preferred the writ petition Civil Rule No. 1344/1988. In the affidavit, the DEE further stated that as the termination of the service of the petitioner was suspended by this Court on 09.08.1988 in Civil Rule No. 1344/1988 and as in the meanwhile the petitioner passed his Junior Basic Training on his 3rd attempt, the Deputy Inspector of Schools, Dhakuakhana and North Lakhimpur re-appointed him against the vacant post vide order dated 02.03.1991 in the

pay scale of Rs.1185/- to Rs.2395/- per month as per the direction specified in the letter dated 26.10.1989 issued from the office of the DEE, Assam and that the service of the petitioner was confirmed on 02.08.1995 by the then Deputy Director of Schools, Dhakuakhana. Though, the petitioner received his salary w.e.f. 03.03.1991 to October, 2013, but his salary was stopped by the then BEEO, Bordoloni as his name was listed amongst the 752 Nos. of terminated teachers that was signed by the then Deputy Inspector of Schools, Dhemaji.

15. The DEE, Assam in its affidavit also stated that pursuant to the order of the Court dated 02.03.2010 passed in WP(C) No. 1048/2004, with a view to examine the nature of appointment, status of posts and working status etc. including the appointment as to whether they are illegally/irregularly appointed, the DEE, Assam on 01.02.2012 and 04.02.2012 by issuing advertisements in the local newspapers invited applications from the irregularly/illegally appointed teachers appointed during 1991-2001 who did not receive their salaries and pursuant to those advertisements, the petitioner submitted his application and also participated in the screening process.

16. In its affidavit the DEE, Assam further stated that the applications that were received pursuant to those advertisements dated 01.02.2012 and 04.02.2012 were examined preliminary at the Directorate level of the Elementary Education Department, thereafter by the concerned Screening Committee, where the Government constituted 5 (five) Screening Committees headed by the concerned Divisional Commissioners and the Principal Secretaries for the 6th Schedule areas. After such screening and on the basis of the reports submitted by the respective Screening Committees, two categories of teachers were identified for accommodation, where, the first category of teachers were identified as those who received their salaries up to 2007 and had successfully completed Junior Basic Training/Diploma in Elementary Education course and those were accommodated as teachers by creating personal/supernumerary posts with prospective effect from the date of approval of the Cabinet that was held on 07.10.2020. The DEE stated that the 2nd category of teachers were identified as those who received salaries up to 2007, but did not acquire the professional qualification before 2011 and those were accommodated as 'Tutor' with prospective effect from the date of approval of the Cabinet meeting held on 07.10.2020.

17. The Director in its affidavit further stated that the petitioner was found to be of illegal category who received salary up to 2013 but did not acquire the professional qualification within the stipulated time and therefore, he was accommodated as a 'Tutor' with prospective effect from the

date of approval of the Cabinet meeting held on 07.10.2020 and accordingly, petitioner's name was recommended as 'Tutor' at Bilmukh Kathalguri Lower Primary School under category of illegal/irregular teacher and that his name was reflected in the List 2 (two) of Dhemaji District.

18. The petitioner by filing an affidavit-in-reply stated that on finding that the petitioner has cleared his Junior Basic Training Course Examination on 3rd attempt, the respondent authorities re-appointed him as per the communication dated 06.06.1989 issued by the Joint Director of Elementary Education, Assam and appointed him against a vacant sanctioned post of a retired teacher at Korabandh Lower Primary School on 02.03.1991 and later his service was regularized as an Assistant Teacher and as such, the petitioner rebutted the claim of the respondent authorities that he is an illegal teacher.

19. It is already stated above that the petitioner himself admitted that in terms of his appointment order dated 01.01.1985 issued by the Deputy Inspector of Schools, Dhemaji being appointed as a stipendiary teacher, he could not pass the Junior Basic Training Course on his two attempts and therefore, he was terminated from his service in terms of his said appointment order dated 01.01.1985. The petitioner along with two other similarly terminated teachers, who could not pass the Junior Basic Training Course Examination even on their second attempt, were terminated from service by the Deputy inspector of Schools, Dhemaji vide order under Memo No. 3608-18 dated 27.06.1988. Against the same, the petitioner along with the two others, preferred a writ petition being Civil Rule No. 1344/1988 wherein the Court by order dated 09.08.1988 in the interim suspended the order of termination of those petitioners from service, including the petitioner, dated 27.06.1988 issued by the Deputy Inspector of Schools, North Lakhimpur.

20. On being enquired, neither the petitioner nor her counsel could state about the outcome of the said Civil Rule No. 1344/1988 that was preferred by the petitioner along with two others.

21. The record of said Civil Rule No. 1344/1988 was accordingly called for and from the same, it is seen that none appeared in the matter when it was called for hearing on 24.05.1993. As such, the Court by order dated 24.05.1993 dismissed the said Civil Rule No. 1344/1988 preferred by the petitioner along with two others, namely, Sri Aneng Kaman and Sri Arun Sinte, vacating the stay order dated 09.08.1988 that was passed earlier in the said proceeding. It is also seen from the record of said Civil Rule No. 1344/1988 that the said order dated 24.05.1993 passed by this Court dismissing the said Civil Rule and vacating the order of stay dated 09.08.1988 passed earlier in the said proceeding was also communicated by the Registry of this Court vide Memo No. 5546-57 dated

06.04.1996 to the Deputy Inspector of Schools, North Lakhimpur as well as the Director of Elementary Education, Assam.

22. It is seen that the petitioner filed this writ petition on 28th March, 2016 annexing the copy of the order dated 09.08.1988 passed in said Civil Rule No. 1344/1988 by which the Court in the interim suspended the order of termination of the petitioner and two others from service on 27.06.1988 (Annexure-B). But the petitioner remained silent with regard to the final outcome of the said Civil Rule No. 1344/1988 and did not state about the order dated 24.05.1993 passed by the Court in the said Civil Rule whereby the same was dismissed and the stay order passed earlier on 09.08.1988 was vacated.

23. Said dismissal of Civil Rule No. 1344/1988 on 24.05.1993 is now more than thirty years old and at the time of filing this petition, it was about 27 years old. As such, by efflux of time said order of the Court dated 24.05.1993 dismissing the Civil Rule No. 1344/1988 has become final. Since the petitioner was aware of the interim order dated 09.08.1988 passed in said Civil Rule No. 1344/1988 that was preferred by him, as such he was also aware of the final order dated 24.05.1993 passed in his said Civil Rule. The above clearly reveals that the petitioner in this petition suppressed the dismissal of his said Civil Rule No. 1344/1988 and about the vacation of the interim stay order dated 09.08.1988 before the Court

24. From the order of the Deputy Inspector of Schools, Dhakuakhana and North Lakhimpur under Memo No. 1/90/31987-91 dated 02.03.1991 annexed to this petition as Annexure-E (Page-18 English translation and Page-19 in vernacular Assamese), the Court found that the petitioner was appointed as an Assistant Teacher in the pay scale of Rs. 1185/- to Rs. 2395/- per month in terms of the order dated 09.08.1988 passed in Civil Rule No. 1344/1988, who was terminated as stipendiary teacher and was posted at Karhabandha Lower Primary School against a vacant post of one Sri Sarbeswar Gogoi, who retired from service.

25. Since the Hon'ble Court on 24.05.1993 have dismissed the said Civil Rule No. 1344/1988 preferred by the petitioner and two others and also vacated the order of stay dated 09.08.1988, whereby the termination from service of the petitioners therein, including the petitioner, were suspended; therefore, the said appointment of the petitioner dated 02.03.1991 issued by the Deputy Inspector of Schools, Dhakuakhana and North Lakhimpur automatically ceased to exist from 24.05.1993, as his said appointment was only on the basis of the order of the Court dated 09.08.1988 passed in Civil Rule No. 1344/1988.

26. From the said order of the Deputy Inspector of Schools, Dhakuakhana and North Lakhimpur under Memo No. 1/90/31987-91 dated 02.03.1991, it is seen that in addition to the order of the Court dated 09.08.1988 passed in Civil Rule No. 1344/1988, the petitioner was also appointed on the basis of the letter of the Joint Director of Elementary Education, Assam, Kahilipara issued under No. EAA-12/73/386 dated 06.06.1989.

27. In the said communication issued under No. EAA-12/73/386 dated 06.06.1989 the Joint Director of Elementary Education, Assam clearly stated that – *those stipendiary teachers who could not pass the Junior Basic Training in spite of their two attempts and have been removed from service, if those stipendiary teachers on their 3rd attempt or thereafter could pass the Junior Basic Training then re-appointment of those teachers can be considered through the relevant rules of appointment by giving them preference above others* [already stated at para-7 above].

28. From the said communication dated 06.06.1989 of the Joint Director of Elementary Education, Assam, it is clear that — those stipendiary teachers who could not pass their Junior Basic Training Course Examination in spite of their two attempts and removed/terminated from service, on passing the JBT Examination on their 3rd attempt or thereafter, they can be considered for re-appointment as per the relevant rules of appointment, giving them preference above other candidates.

29. It is to be noted herein that the State Government in the Education Department w.e.f. 19th March 1979 brought in to force "The Assam Elementary Education (Provincialisation) Rules, 1977, a statutory Rule under Article 309 of the Constitution of India, regulating the recruitment and conditions of service of the teachers of the elementary schools which were provincialised under the Assam Elementary Education Elementary Education (Provincialisation) Act, 1977. Said 1977 statutory Rules provided the method of recruitment by way of advertisement and selection with required educational qualification and was in force when the petitioner was re-appointed by the order of the Deputy Inspector of Schools, Dhakuakhana and North Lakhimpur dated 02.03.1991. But the said order dated 02.03.1991 however does not reflect about following the said 1977 Rules while reappointing the petitioner.

30. Their Lordships, comprising a Bench of three Hon'ble Judges of the Hon'ble Supreme Court in the case of *R. Vishwanatha Pillai -Vs- State of Kerala*, reported in (2004) 2 SCC 105 have held that — *the right to salary or pension after retirement flows from a valid and legal appointment*. It is also settled by the Hon'ble Apex Court in catena of decisions that *a valid and legal appointment* means

appointment made by following the provisions of Articles 14 and 16 of the Constitution of India, by advertisement and selection and as per the procedure of Recruitment Rules with regard to the relevant post, in force, if any, during the time of recruitment.

- 31.** For the reasons above, this writ petition, being devoid of any merit, stands dismissed.
- 32.** Return the records of Civil Rule No. 1344/1988 disposed of on 24.05.1993 that was called for.

JUDGE

Comparing Assistant